

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DANNY L. KIRTS,)	4:05CV3281
)	
Plaintiff,)	
)	
vs.)	MEMORANDUM
)	AND ORDER
THE BURLINGTON NORTHERN)	
SANTA FE RAILWAY, a Delaware)	
corporation; and LIBERTY)	
MUTUAL INSURANCE GROUP,)	
)	
Defendants.)	
)	
_____)	
)	
BNSF RAILWAY COMPANY,)	
f/k/a Burlington Northern and)	
Santa Fe Railway Company,)	
)	
Defendant and)	
Third-Party Plaintiff,)	
)	
vs.)	
)	
THE WESTERN SUGAR)	
COOPERATIVE, a Colorado)	
Cooperative Corporation,)	
)	
Third-Party Defendant.)	

Pending before the court is a motion for summary judgment (filing 60) filed by defendant and third-party plaintiff BNSF Railway Company. In light of the fact that the parties intend to mediate this matter (Filing 58, Amended Mediation Reference Order), I shall deny the pending motion for summary judgment without prejudice to refile should mediation prove to be unsuccessful. Accordingly,

IT IS ORDERED that the motion for summary judgment (filing 60) filed by defendant and third-party plaintiff BNSF Railway Company is denied without prejudice to refiling should mediation prove to be unsuccessful.

July 13, 2006.

BY THE COURT:
s/ Richard G. Kopf
United States District Judge